IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

Crl.MC.No. 224 of 2007()

CC.396/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II,NEYYATTINKARA

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PETITIONER:

SUJIN,S/O.PALAS, AGED 31 YEARS,
RESIDING AT PERKATHUVILA,
THULUVILA VEEDU,MURYANIKARA,PARASSALA,
THIRUVANANTHAPURAM.

BY ADV. SRI.V.N.GOPALAKRISHNAN NAIR
SRI.AYYAPPAN SANKAR

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 31/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 224 of 2007

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Dated this the 31st day of January, 2007

O R D E R

The petitioner is the first accused in a prosecution, inter alia, under Sections 341, 323 and 324 r/w. 149 I.P.C. Cognizance was taken on the basis of the final report filed by the police. Crime was registered on the basis of a private complaint filed by the complainant and referred to the police by the learned Magistrate under Section 156(3) Cr.P.C., submits the learned counsel. The petitioner was not available for trial. The co-accused, who stood trial, have been found to be not guilty and acquitted by judgment dt. 30.6.2006, copy of which is produced as Annex.VII. There are two injured persons, CWs. 1 and 2. They were examined before court as PWs. 1 and 2. They did not support the prosecution case. The co-accused have thus been acquitted.

2. The case against the petitioner has been split up. The petitioner has now come to this court with a prayer that the proceedings against him may be quashed. Two reasons are urged.

All the witnesses, who are to be examined in the case against the petitioner, have already been examined in the trial against the co-accused. They have not supported the prosecution case. Secondly it is contended that there has been due composition of the compoundable offences. In these circumstances it is prayed that the proceedings against the petitioner may be quashed.

3. Both reasons do not appear to me to be sufficient to justify the prayer for quashing of the proceedings. In **Moosa** v. **S.I. or Police** (2006 (1) KLT 552) the Full Bench of this Court held categorically that the mere fact that the witnesses have turned hostile to the prosecution in the trial against the co-accused cannot deliver any advantage to the absconding co-accused, who does not appear before Court and participate in the proceedings.

4. The second contention does, of course, deserve more serious consideration. The victims appear to have compounded the offences allegedly committed against them by the petitioner herein also. Indications to that effect are available in the depositions recorded in their evidence in the trial against the co-accused. The compromise petition filed earlier has been produced as Annex.VIII. The composition of the offences

allegedly committed by the petitioner has not been considered by the court below.

5. It is for the petitioner and the victims to appear before the learned Magistrate and file an application for composition. The composition of the compoundable offences can certainly be accepted. The question of grating permission for such composition, if any required, can also be considered by the learned Magistrate. After so dealing with the compoundable offences, the learned Magistrate must still consider, in the light of the acquittal of the co-accused in the trial that has already been held, whether charges are liable to be framed against the petitioner for the remaining non-compoundable offences. All offences in this case are summons offences and there is no requirement of raising a formal charge. In these circumstances, the learned Magistrate must consider whether the proceedings are liable to be discontinued and dropped invoking the powers under Section 258 Cr.P.C.

6. This Crl.M.C. is accordingly dismissed, but with the specific observation that it shall be open to the petitioner to appear before the learned Magistrate along with the alleged victims and file application for composition. The learned Magistrate must consider such application for

composition and must further consider whether in view of the composition, if accepted, any further proceedings are liable to be taken or continued against the petitioner for the remaining offences alleged against him.

(R. BASANT)
Judge

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